CALIFORNIA JURISPRUDENCE

A COMPLETE STATEMENT OF THE LAW AND PRACTICE OF THE STATE OF CALIFORNIA

Editor

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pawnbroker; and the giving of information in regard to owners and drivers of automobiles involved in accidents.[10] Regulations aimed at the control and improvement of state and municipal property and the conservation of natural resources are clearly referable to, and warranted by, the same power.[11] Thus the state has the right directly or through its agencies to control the use of the public highways for all purposes subserving their uses as such, and in the exercise of such right may deprive the owner of the fee, of the right to destroy trees on such highway.[12] Likewise the state may exercise this power in improving the navigability of streams,[13] Regulations under the police power which affect adjoining land owners have been discussed in an earlier article.[14]

Regulation and Prohibition of Occupations.

§ 111. Regulation.—The principles affecting the right of legislative bodies in the exercise of the police power to place restrictions upon the conduct of lawful pursuits and occupations are well settled, although there is often great difficulty in applying these principles to a given

10. People v. Diller, 24 Cal. App. 799, 142 Pac. 797, per Shaw, J. See particular subjects, such as AUTOMOBILES; FOOD; MINES AND MINERALS; PAWNBROKERS; PHYSICIANS AND SURGEONS, etc.

11. See FISH AND FISHERIES; GAME; MINES; OIL; PUBLIC LANDS; WOODS AND FORESTS; WATERS.

12. Santa Barbara County v. More, 175 Cal. 6, L. R. A. 1917F, 385, 164 Pac. 895; Western Union Tel. Co. v. Visalia, 149 Cal. 744, 87 Pac. 1023 (placing of telegraph and telephone poles and wires, so as to prevent unreasonable obstruction of travel); In re Thomas, 10 Cal. App. 375, 102 Pac. 19 (an ordinance which prohibits public lectures, discourses, etc., on the streets, within a certain district of the city, is not an ordinance which attempts to suppress freedom of speech, or seeks to interfere with the citizen in the right to express his views upon any subject, political, religious or otherwise). See HIGHWAYS; MUNICIPAL CORPORATIONS.

13. Gray v. Reclamation District No. 1500, 174 Cal. 622, 163 Pac. 1024; Green v. State, 73 Cal. 29, 11 Pac. 602, 14 Pac. 610; Hoagland v. City of Sacramento, 52 Cal. 142; Green v. Swift, 47 Cal. 536. See WATERS.

14. See ADJOINING LAND OWNERS, vol. 1, p. 388.

state of facts. The general principle is clear that it is within the legislative discretion to place such restrictions upon the use of any property or the conduct of any business as may be reasonably necessary for the public safety, comfort, health or morals.[15] While the right to engage in a lawful and useful occupation cannot be taken away under the guise of regulation, nevertheless such an occupation may be subjected to regulation in the public interest even though such regulation involves in some degree a limitation upon the exercise of the right regulated; the test is: Is the limitation imposed by way of regulation only? and does it go no further than to throw reasonable safeguards in the public interest around the exercise of the right?[16] The right of every person to pursue any lawful calling is therefore subject to reasonable regulation in aid of the public safety, the public health or the public morals.[17] Such a regulation to be reasonable must apply

15. In re Farb, 178 Cal. 592, 3 A. L. R. 301, 174 Pac. 320; Matter of Application of Barmore, 174 Cal. 286, L. R. A. 1917D, 688, 163 Pac. 50; Ex parte Hadacheck, 165 Cal. 416, L. R. A. 1916B, 1248, 132 Pac. 584 (burning of brick); Laurel Hill Cemetery v. City and County of San Francisco, 152 Cal. 464, 14 Ann. Cas. 1080, 27 L. R. A. (N. S.) 260, 93 Pac. 70 (interment in cemeteries); Plumas County v. Wheeler, 149 Cal. 758, 87 Pac. 909 (license taxes); Ex parte Drexel, 147 Cal. 763, 3 Ann. Cas. 878, 2 L. R. A. (N. S.) 588, 82 Pac. 429; Odd Fellows' Cemetery Assn. v. City and County of San Francisco, 140 Cal. 226, 73 Pac. 987; Matter of Yick Wo, 68 Cal. 294, 58 Am. Rep. 12, 9 Pac. 139 (reversed in particular application of principle, in Yick Wo v. Hopkins, 118 U. S. 35, 30 L. Ed. 220, 6 Sup. Ct. Rep. 1064, see, also, Rose's U. S. Notes; Ex parte Stoltenberg, 21 Cal. App. 722, 132 Pac. 841; Aaroe v. Crosby, 32 Cal. App. Dec. 755, 192 Pac. 97 (but holding plumbers act of 1917 void as discriminatory); Yee Gee v. City and County of San Francisco, 235 Fed. 757 (but holding laundry ordinance void, which unreasonably limited the hours of labor in laundries in all sections of the city).

16. Riley v. Chambers, 181 Cal. 589, 185 Pac. 855, per Olney, J. (provision that real estate broker shall furnish evidence of good moral character is reasonable, since occupation is of a fiduciary character). See infra, § 115, as to unreasonable restrictions. See BROKERS, vol. 4, p. 552.

17. Ex parte Drexel, 147 Cal. 763, 3 Ann. Cas. 878, 2 L. R. A. (N. S.) 588, 82 Pac. 429. See infra, §§ 130, 131, as to restraint on liberty.

alike to all persons within a class.[18] Where the business is one which the legislative authority has power to prohibit, it can, of course, impose such condition upon its existence as it pleases.[19]

§ 112. Illustrations of Regulation.—The legislature has the power, for the protection of the public, to regulate the practice of any particular profession which requires the possession of special knowledge, skill and training in its exercise.[20] Such professions include those of architects,[1] attorneys at law,[2] druggists,[3] dentists,[4] and physicians and surgeons.[5] It is now well recognized that the business of banking is subject to regulation under the police power.[6] Likewise the business of pawnbroker has

18. See infra, § 115, as to imposition of unreasonable burdens; §§ 116–123, as to court review, and infra, §§ 189, 190, as to necessity for application to all members of class.

19. Ex parte Murphy, 8 Cal. App. 440, 97 Pac. 199; Ex parte Christensen, 85 Cal. 208, 24 Pac. 747 (public billiard and pool rooms, stating that it is well settled that the governing power may prohibit the manufacture and traffic in liquor altogether, provived only that it does not interfere with interstate commerce); Ex parte Statham, 31 Cal. App. Dec. 193, 187 Pac. 986 (prohibiting soliciting transportation of passengers and baggage at railroad depots); Reed v. Collins, 5 Cal. App. 494, 90 Pac. 973. See infra, § 113, as to prohibition of business.

20. People v. Ratledge, 172 Cal. 401, 156 Pac. 455 (qualifications of physicians and surgeons); Ex parte McManus, 151 Cal. 331, 90 Pac. 702; Ex parte Whitley, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879. See LICENSES.

1. Ex parte McManus, 151 Cal. 331, 90 Pac. 702. And see ARCHITECTS, vol. 3, p. 96.

2. See ATTORNEYS AT LAW, vol. 3, p. 589.

3. Matter of Yun Quong, 159 Cal. 508, Ann. Cas. 1912C, 969, 114 Pac. 835, and note. See DRUGS AND DRUGGISTS.

4. Ex parte Hornef, 154 Cal. 355, 97 Pac. 891; Ex parte Whitley, 144 Cal. 167, 1 Ann. Cas. 13, 77 Pac. 879.

5. People v. Ratledge, 172 Cal. 401, 156 Pac. 455; Hewitt v. State Board of Medical Examiners, 148 Cal. 590, 113 Am. St. Rep. 315, 7 Ann. Cas. 750, 3 L. R. A. (N. S.) 896, 84 Pac. 39; Ex parte McNulty, 77 Cal. 164, 11 Am. St. Rep. 257, 19 Pac. 237; Ex parte Johnson, 62 Cal. 263; Ex parte Fraser, 54 Cal. 94. And see PHYSICIANS AND SURGEONS.

6. State Savings etc. Bank v. Anderson, 165 Cal. 437, 132 Pac. 755. See BANKS, vol. 4, pp. 106, 107.

always been the subject of regulation for the benefit of the public, and it is unlawful if not conducted under the provisions, restrictions and requirements of the law.[7] So, also, the legislature may take cognizance of those businesses wherein it is customary and habitual to charge excessive rates of interest and take mortgages upon the personal goods or assignments of the wages of the borrower as security therefor, and set them apart as subject to regulation peculiar to themselves, in order to avoid the wrongs that would follow if they went unregulated.[8] The conducting of laundries is also a common subject of regulation.[9]

§ 113. Prohibition.—Between the useful business which may be regulated and the vicious business which can be prohibited lie many nonuseful occupations which may or may not be harmful to the public, according to local conditions, or the manner in which they are conducted.[10] Regulation measures, not extending to the stringency of prohibition, might afford adequate protection in some communities, while in others conditions might exist by reason of which the public welfare demanded the absolute suppression of such businesses. In all cases, however, the extent to which the power shall be exercised is a mat-

7. Levinson v. Boas, 150 Cal. 185, 11 Ann. Cas. 661, 12 L. R. A. (N. S.) 575, 88 Pac. 825. See PAWNBROKERS.

8. Eaker v. Bryant, 24 Cal. App. 87, 140 Pac. 310, per Conrey, P. J., holding law which regulates such business is not unconstitutional because it grants to some classes of citizens special privileges and immunities which upon the same terms are not granted to others, or because it conflicts with the provisions of the constitution of the United States prohibiting the various states from making or enforcing laws abridging the privileges or immunities of citizens and depriving persons of property without due process of law.

9. Ex parte Moynier, 65 Cal. 33, 2 Pac. 728; Barbier v. Connolly, 113 U. S. 27, 28 L. Ed. 923, 5 Sup. Ct. Rep. 357, see, also, Rose's U. S. Notes, affirming judgment in superior Court of San Francisco. See supra, § 105, as to local and geographical factors in exercise, and see MUNICIPAL CORPORATIONS.

10. Murphy v. California, 225 U. S. 623, 32 Sup. Ct. Rep. 697, 41 L. R. A. (N. S.) 153, upholding poolroom ordinance.